COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY

TOWN OF FRAMINGHAM REQUEST FOR DETERMINATION OF RATES APPLICABLE TO TRANSPORTATION AND TREATMENT OF SEWAGE PURSUANT TO INTERMUNICIPAL AGREEMENT	)	**D.T.E. 02-46**

THE TOWN OF FRAMINGHAM'S BRIEF IN REPLY TO THE INITIAL BRIEF OF THE TOWN OF ASHLAND

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

I. INTRODUCTION

This brief responds to certain unsupported assertions, assumptions, and arguments made in the Town of Ashland's initial post-hearing brief.[1] In general, Ashland's arguments and assertions are inconsistent with the express language of the parties' contract, the Department's legal precedent and rate-setting goals, and the record established at the evidentiary hearing in this matter. Further, Ashland does not articulate one coherent formula, but instead discusses discrete elements of the different formulas Ashland has advanced in this proceeding, ultimately resulting in uncertainty as to exactly which methodology Ashland is advocating. Ashland's inability to explain its own methodology in a coherent fashion is illustrative of the problems inherent in Ashland's approach, application of which would be expensive, time-consuming, and likely to result in frequent disputes between the parties as to the amount owed by Ashland to Framingham in any one year.

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[1] Contrary to the Department's regulations, 220 CMR 1.11 (4)(b), Ashland's brief is largely devoid of record citations, and many of the assertions made by Ashland are without any record support. Framingham notes that this same problem also is manifest in Ashland's reply brief, which was served on Framingham on October 31, 2003, a week prior to the November 7, 2003 filing deadline. Where appropriate, Framingham has included references to Ashland's reply brief herein. Framingham further notes that, per the Hearing Officer's November 6, 2003 ruling on Framingham's Motion to Strike, Framingham has not addressed the documents appended to Ashland's initial brief or the portions of Ashland's brief that have been stricken.

In contrast, the methodology proposed by Framingham, as set forth in more detail in Framingham's initial brief, is consistent with the language of the IMA, with the Department's legal precedent, and with the Department's rate-setting goals. Framingham's proposed methodology is simple to apply, fair to both parties, and based on easily verifiable data maintained by the MWRA. The Department, therefore, should adopt Framingham's proposed methodology in determining the fair and proportionate share to be paid by Ashland for its use of Framingham's sewer system.

II. ASHLAND'S PROPOSED FORMULAS ARE INCONSISTENT WITH THE LANGUAGE OF THE IMA, DEPARTMENT PRECEDENT, AND THE PARTIES' OWN COST ALLOCATION METHODS.

In its initial brief, Framingham criticized Ashland's proposed formulas as not being premised on reliable expert testimony, where Ashland's consultants, instead of conducting an independent analysis as to the appropriate formula to be applied, simply adopted the formula provided to them by Ashland. (Framingham's Initial Brief, pp. 36-38). In its reply brief, Ashland does not rebut these criticisms.[2] Instead, Ashland attempts to salvage its

[2] As discussed in Framingham's initial brief, Ashland claims that it based its formula on a document received from Bill Skinner, a Framingham employee who did not have the authority or expertise necessary to make a determination as to the proper methodology to be applied in assessing Ashland's rate. (Framingham's Initial Brief, pp. 36-37). Ashland did not call Mr. Skinner to testify at the hearing, and thus there is no record evidence as to the sources or accuracy of the data relied on by Mr. Skinner in creating this document. (See 220

proposed methodologies by arguing that they somehow are consistent with the language of the IMA, with applicable precedent, and with the Department's rate-setting goals. These arguments are unavailing.

A. Ashland's Proposed Formulas Are Inconsistent With The Language Of The IMA.

In its initial post-hearing brief, Ashland made only passing reference to the IMA, and did not even attempt to argue that the language of the contract supported the allocation of costs on an "inch-mile" basis. (Ashland's Initial Brief, pp. 1-2). In its reply brief, however, in response to Framingham's initial brief, Ashland argues that the IMA does support this method of cost-allocation, because it makes reference to Ashland's anticipated use of "trunk lines" in Framingham's system. (Ashland's Reply Brief, pp. 2-4). Ashland then attempts to explain away the IMA's numerous references to Ashland's use of Framingham's system, including its requirement that Ashland pay "a fair and equitable proportionate share of the actual cost of the maintenance of said system," by asserting that one must interpret each reference to Framingham's "system" as modified by the reference to "trunk lines," even though no

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CMR 1.10(1)(Department shall not base its decision on evidence which is not of the kind on which reasonable persons are accustomed to rely in the conduct of serious affairs). At the hearing, Ashland's counsel conceded that the facsimile received from Mr. Skinner was irrelevant and should be stricken. (Transcript, p. 389, ll. 9-10).

such connection is made in the contract itself. (Ashland's Reply Brief, pp. 3-4).

Ashland's reading of the IMA is strained, to say the least. If the parties had intended that Ashland should pay only for its proportionate share of the costs of operating those pipelines utilized by Ashland, the parties easily could have included language to that effect in the contract. They did not. Moreover, the parties did not attempt to define the pipelines that Ashland would use, nor did the parties specify the length or diameter of those pipelines. Thus, the parties could not have contemplated that Ashland's payments would be based on an inch-miles calculation. Finally, Ashland's contention that the IMA defines and limits the universe of pipes for which Ashland will be responsible is contrary to historical reality, in that the system as it currently is configured is different than the system that existed at the time the IMA was executed. (P. Brinkman Testimony, Tr. p. 827; Exh. ASH-FR-1-2 (list of pipe segment locations and pipe diameters pre- and post-1963)).

In sum, Ashland's contention that the language of the IMA supports utilization of a formula based on inch-miles is without merit. Moreover, as set forth below, Ashland's proposed formulas also are inconsistent with applicable

precedent, with the Department's rate-setting goals, and with Ashland's own method of allocating the costs of operating its wastewater collection system.

B. Ashland's Formulas Are Inconsistent With Department Precedent And With Its General Rate Setting Goals.

1. Ashland's Formulas Are Inconsistent With Department Precedent

Ashland did not cite to any Department precedent in support of its proposed formula or formulas for determining the O&M rate, and Framingham is not aware of any precedent that supports Ashland's attempt to establish a utility rate premised on costs incurred for providing service only to one particular customer. (See Ashland's Initial Brief, pp. 6-7 and § 2A). To the contrary, the Department has rejected this approach in similar contexts on more than one occasion. See In re Boston Gas Company, D.P.U. 18661, pp. 5-9 (1977) (hereinafter Boston Gas I); In re Boston Gas Company, D.P.U. 90-17/18/55, pp. 27-30 (hereinafter Boston Gas II).

As discussed in Framingham's initial brief, the Boston Gas cases stand for the proposition that system-wide cost allocation is fair and appropriate, even if a particular customer may pay more than the actual cost of providing service to that class, where the costs attributable to

providing service to the customer are not "readily and accurately measurable." (Framingham Initial Brief, pp. 10-17). Moreover, in determining whether direct costs are "readily" measurable, it is appropriate to consider whether the expenses associated with the effort to segregate costs outweigh the benefits of allocating costs among different customer classes. See Boston Gas II, D.P.U. 90-55/17/18, at p. 29.

In its reply brief, Ashland unsuccessfully attempts to distinguish its cost-allocation arguments from those presented by the losing parties in the Boston Gas cases. Ashland claims that, unlike Hanscom Air Force Base, the losing party in Boston Gas I, it obtains no benefit from the existence of all of the infrastructure associated with Framingham's wastewater collection system, because it only uses certain pipelines within that system. This argument, however, ignores the obvious. Framingham could not operate a municipal wastewater collection system that did not serve the needs of its residents. (S. Geribo Testiony, Tr. p. 99). If Framingham did not have a municipal wastewater collection system, Ashland would have no means to transport its wastewater to the FES. Thus, Ashland benefits from the existence of Framingham's wastewater collection system, and should have to pay its fair and proportionate share of

operating said system, in accord with the language of the IMA.

Ashland also takes issue with Framingham's discussion of that part of Boston Gas I in which the Department rejected Hanscom's argument that it should be accorded a preferential rate due to its status as a wholesaler. (Ashland's Reply Brief, p. 8). Ashland now argues that this discussion is irrelevant because Ashland is not seeking a "price break" from Framingham. In its direct testimony, however, Ashland took just such a position – Ashland argued that it should be treated differently than Framingham's other users because of its status as a wholesaler. (D. Blois Direct Testimony, p. 12, line 13; S. Sylven Direct Testimony, p. 27, line 4). Thus, the Department's discussion, and rejection, of Hanscom's position that it was entitled to a price break because of its status as a wholesaler is entirely relevant, and controlling, here.

Ashland also is unsuccessful in its attempts to distinguish Boston Gas II. In that case, as discussed in more detail in Framingham's initial brief at pages 12-14, the Department held that it could not equitably allocate the costs associated with WMLD's use of particular pipelines within the Boston Gas system, because WMLD's use

of those pipelines had been dictated by "geography and historical accident," rather than any class-specific cost-causative factor. Boston Gas II, D.P.U. 90-17/18/55, at pp. 29-30. Ashland asserts that its situation is different because the two towns selected the pipelines utilized by Ashland based on specific, cost-causative factors, and because the cost of maintaining the shared pipelines is "markedly smaller" than the costs of maintaining other parts of Framingham's system. (Ashland's Reply Brief, pp. 10-11).

There is no record evidence supporting Ashland's assertions. In particular, there is no evidence as to how the parties selected the pipes through which Ashland's sewage now flows,[3] although one reasonably could assume that the route of Ashland's sewage was in fact dictated by "geography and historical accident" – i.e., Ashland's physical location vis-à-vis the FES, and the existing configuration of Framingham's system at the time the parties entered into the IMA. There also is no record evidence establishing that the pipelines utilized by

[3] Ashland erroneously cites to a portion of Mr. Geribo's testimony as support for its assertion that the parties chose the "shared pipelines" for specific, cost-causative reasons. (Ashland's Reply Brief, page 11, line 3). In fact, Mr. Geribo said no such thing. In the cited portion of his testimony, Mr. Geribo acknowledged that Ashland's wastewater does not currently flow through any force mains owned by Framingham. (S. Geribo Testimony, Tr. p. 80, lines 7-14). Mr. Geribo was not asked, and did not offer, his opinion as to how the towns decided on the route of Ashland's wastewater.

Ashland are less expensive to maintain than any other components of Framingham's system – in fact, the only record evidence is to the contrary. (S. Geribo Testimony, Tr. pp. 356-58, 850-854 (costs of operating the two main sewer lines utilized by Ashland likely more than double the costs of maintaining other pipelines in Framingham's system)).

In sum, Ashland has not distinguished the facts of this case from the precedents cited by Framingham, which weigh strongly in favor of application of Framingham's proposed methodology, nor has Ashland cited to any precedent in support of its proposed methodologies. Ashland also has not shown that application of its proposed formulas would be consistent with the Department's rate-setting goals.

2. Application of Ashland's Formulas Would Be Inconsistent With the Department's Rate-Setting Goals.

Ashland's proposals are inconsistent with the Department's goals when determining rates. As previously discussed, the Department's goals for determining rates are efficiency, simplicity, continuity, fairness, and earnings stability. Boston Gas II, D.P.U. 90-17/18/55 at p. 12. In its reply brief, Ashland agrees that the Department should be guided by these goals in selecting the appropriate

methodology to apply in determining Ashland's annual payment. (Ashland's Reply Brief, p. 26). Neither of Ashland's proposed formulas, however, satisfies these goals.

a. Ashland's Proposed Formulas Do Not Result In A Fair Allocation Of The Benefits And Burdens Involved In Ashland's Use Of Framingham's System.

Ashland's proposed formulas are not fair to Framingham or to any other user of Framingham's system because they treat Ashland more favorably than any other user of Framingham's system. (Framingham's Initial Brief, p. 18). Ashland has failed to articulate a single justification for its argument that its rate should be determined in a more favorable way than other users, nor has Ashland explained why it is appropriate for Ashland to pay a pittance for the significant benefit it receives as a result of its use of Framingham's system. Essentially, it is outrageous for Ashland to take the position that it should pay almost the same amount for transport of its wastewater as it agreed to pay in 1963, almost forty years ago, where both municipalities have grown exponentially over the past forty years, and the cost of operating Framingham's wastewater collection system, like all municipal services, has grown exponentially as well.

b. Ashland's Proposed Formulas Are Inconsistent With The Department's Goal Of Continuity.

In its initial brief, Framingham argued that application of either of Ashland's proposed formulas, which would result in Ashland paying only about 0.5% of Framingham's average annual O&M costs despite contributing between 8-11% of total system flows (see S. Sylven Testimony, Tr. pp. 574-75) would jeopardize Framingham's ability to provide long-term sewer services to all of its users. (Framingham's Initial Brief, p. 21). In its reply brief, Ashland does not argue in opposition to this point.[4]

c. Ashland's Formulas Are Not Consistent With The Department's Goals of Efficiency And Simplicity.

In its reply brief, Ashland acknowledges that Framingham's proposed methodology would be simpler to apply, and involve less administrative cost, than either of Ashland's proposed methodologies. (Ashland's Reply Brief,

[4] Framingham also argued in its initial brief that its proposed methodology would promote the goal of earnings stability, and that it would be impossible to achieve that goal if the Department were to adopt a formula that attempted to assess to Ashland, in each year, the O&M costs directly attributable to the shared pipes, as that O&M figure could vary widely from year to year. (Framingham's Initial Brief, p. 22). In its reply brief, Ashland takes issue with this assertion, apparently misreading this statement as directed to Ashland's proposed methodologies. (Ashland's Reply Brief, pp. 16-17). In fact, Framingham was directing this statement at the type of methodology outlined in Exh. FR-42, which would require Framingham to track costs directly attributable to operations and maintenance performed on the so-called "shared pipelines."

p. 26).[5] Ashland further acknowledges that, with respect to its own proposed methodologies, there is a live dispute between the parties as to whether the overflow pipes utilized by Ashland should be included in any inch-mile calculation (id. at p. 26; Ashland's Initial Brief, pp. 12-19) and as to the exact number of inch-miles in Framingham's entire system (Ashland's Initial Brief, p. 19). Given the history of the present dispute, there is no doubt that resolution of these issues, if the Department were to adopt either of Ashland's proposed formulas, would be time-consuming and expensive. (P. Brinkman Testimony, Tr. pp. 800-803; S. Sylven Testimony, Tr. pp. 597, 614).

Moreover, Ashland attempts to downplay the additional costs that would be incurred in implementing its second proposed formula, which utilizes the planning estimates provided in Title V, 310 CMR 15.203, as a means to estimate Framingham's flow in each segment of the shared pipelines. (Ashland's Reply Brief, p. 24). Ashland acknowledges that application of this formula would require an annual count

[5] As conceded by Ashland in its reply brief, Framingham's methodology is based on metered flow data, and does not depend for its application on a measurement of infiltration/inflow from either town, or on a determination of exactly which pipes Ashland's sewage flows through. Even if the Department were to find that Framingham's methodology should be applied only to that part of the system tributary to the pipes through which Ashland's sewage flows, as depicted in Exh. FR-44, application of Framingham's methodology would require installation of only one new meter, which would measure flows from the Saxonville/Speen Street areas. (S. Geribo Testimony, Tr. p. 849).

of the number of bedrooms in each residence, the number of lanes in each bowling alley, the number of chairs in each barber shop, the number of doctors at each doctor's office, the number of employees at each industrial location, and the number of gasoline islands at each service station. (Id.; Ashland Response to DTE Record Request No. 4 (attaching relevant portions of Title V)). Ashland further asserts, however, that Framingham's Assessor's Office regularly maintains and updates this type of data, and that "no additional labor" would need to be performed to obtain this information. (Ashland's Reply Brief, p. 24). Ashland provides no citation for these statements, for the simple reason that no support exists for these statements in the record. The Department, therefore, should not give these statements any weight.[6]

C. Ashland's Formulas Are Inconsistent With Its Own Cost-Allocation Methods

In its initial brief, Framingham pointed out that it was hypocritical of Ashland to argue that it should only have to pay for those portions of Framingham's system that it actually utilizes, when it charges its own sewer customers without regard to the length of pipe or type of

[6] In fact, Framingham's Assessor's Office establishes the taxable value of commercial establishments based on net book value, see M.G.L. c. 59, § 38, not on any of the types of information specified in Title V, which sets out design criteria for sewage disposal systems.

infrastructure utilized by a particular customer. (Framingham's Initial Brief, p. 25). Framingham also pointed out that other municipalities, including Framingham, also charge their users on the basis of flow, rather than actual infrastructure used to transport a particular resident's wastewater. (Id. at pp. 24-26).

In its reply brief, Ashland asserts that the manner by which municipalities usually allocate costs among users of their wastewater collection systems is "irrelevant" to a determination of the just and proper sum due to Framingham for Ashland's use of its sewer system. (Ashland's Reply Brief, p. 12). While Ashland does not spell out clearly the reasons for this alleged distinction, it appears to rest on Ashland's assertion that it is not a citizen of Framingham, and therefore has not made a bargain to be charged on a *pro rata* basis for services, regardless of the actual amount of services used. (Id. at pp. 11-12).

Ashland misapprehends the point of Framingham's initial argument. Framingham does not contend that municipalities assess an identical charge to each user of their wastewater collection systems. Instead, Framingham has submitted evidence demonstrating that Framingham, Ashland, and other municipalities charge their users on the

basis of flow, not on the basis of the inch-miles of pipe used.

Ashland also contends that Framingham is comparing "apples and oranges," because it would be prohibitively expensive for Framingham to calculate the inch-miles of pipe utilized by each of its residents. (Ashland's Reply Brief, p. 12). Again, Ashland fails to provide any record support for its argument. (Id.) Moreover, Framingham notes that this argument has no force as applied to the MWRA, which clearly could determine the length of pipe used by each member community, and instead has chosen to assess O&M costs on a flow basis. (S. Geribo Direct Testimony, Exh. FR-37, p. 25).

In sum, Ashland has not provided any valid justification for its assertion that its annual payment to Framingham should be calculated in a manner entirely divorced from the methodology Framingham and Ashland apply to their own wastewater customers. As set forth above, Ashland also has failed to rebut Framingham's arguments that Ashland's proposed methodology is not premised on reliable expert testimony, is contrary to the language of the IMA, and is inconsistent with the Department's rate-setting goals.

Ashland also has failed to direct any valid criticism towards Framingham's proposed methodology. Ashland acknowledges that the methodology is simple to apply, and results in continuity and earnings stability. (Ashland's Reply Brief, pp. 16, 26). Ashland does take issue with Framingham's assertion that application of its methodology results in a "fair" allocation of O&M costs, given the burden placed on Framingham's system by Ashland's discharges. (Framingham's Initial Brief, pp. 18-21; Ashland's Reply Brief, pp. 5-6). Ashland's arguments in rebuttal to this point, however, are without support in the record.

III. THERE IS NO RECORD SUPPORT FOR ASHLAND'S ASSERTION THAT FRAMINGHAM'S METHODOLOGY RESULTS IN AN UNFAIR ALLOCATION OF THE BENEFITS AND BURDENS INVOLVED IN ASHLAND'S USE OF FRAMINGHAM'S SYSTEM.

In its initial brief, Framingham argued that its proposed methodology, which assesses Ashland for its proportionate share of the total flow in Framingham's system, represented a fair allocation of the benefits and burdens involved in Ashland's use of Framingham's wastewater collection system. Framingham pointed out that it obtains no benefit from Ashland's use of its system, where it does not and cannot operate its wastewater collection system for profit. (Framingham's Initial Brief,

p. 19). Framingham also described the very real burdens placed on its system by Ashland's discharges, including the adverse effects of sulfides and sulfates present in Ashland's wastewater, the increased risk of surcharges in Framingham's system, and the increased legal and administrative costs associated with Ashland's use of Framingham's system. (Id.) Finally, Framingham noted the very real, and very significant, benefit realized by Ashland, in that Ashland to date has been able to avoid the capital costs associated with construction of its own pipeline to the FES, and has been able to take advantage of the economies of scale inherent in its participation in a wastewater collection system run by a much larger municipality. (Id. at pp. 20-21).

In its reply brief, Ashland did not dispute Framingham's contention that Framingham realizes no benefit from Ashland's use of Framingham's system. Ashland did dispute Framingham's contention that Ashland's discharges had placed a significant burden on Framingham's system. Ashland also disputed the extent to which it had benefited from its use of Framingham's system. As set forth below, Ashland's arguments are without merit.

A. The Record Evidence Clearly Demonstrates That Ashland's Flows Impose A Significant Burden On Framingham's System.

In its initial brief, Ashland admitted that it had exceeded the discharge limits specified in the IMA on at least fourteen occasions, and acknowledged that the exhibits submitted by Framingham demonstrated a correlation between Ashland's exceedances and surcharging in Framingham's system. (Ashland's Initial Brief, pp. 12-18; P. Brinkman Testimony, Tr. pp. 804-820, Exh. FR-45 and Exh. FR-46). Ashland attempts to downplay the impact of these admissions, however, by characterizing the exceedances as extremely limited, given the time period in which Ashland has been discharging into Framingham's system. (Id. at p. 12).

The obvious response to this, however, is that Framingham has only been able to identify exceedances during periods when it has had complete metering data. The metering records produced by Ashland during discovery spanned the years 1994 to 2003, but days, months, and whole years from even that limited time span were missing. (Exh. FR-ASH-1-12). In the spring of 2003, when SEA had its own temporary meters installed throughout Framingham's system, SEA identified exceedances on several days in a one-month period. (P. Brinkman Testimony, Tr. pp. 804-820;

Exh. FR-45 and Exh. FR-46). Thus, Ashland's assertion that it exceeded permissible limits under the IMA on only fourteen days over forty years is misleading, at best.

Ashland also contends that even in those instances where it exceeded its IMA limits, that evidence should be disregarded because the excessive discharges likely were caused by high levels of rainfall. (Cross-Examination of P. Brinkman, Tr. pp. 825-26). Framingham is at a loss to understand how this point assists Ashland's argument – it does rain in New England, sometimes a lot, and that is exactly why Framingham has designed its sewer system to accommodate higher-than-normal flows. Because Ashland benefits from these design choices, it is entirely fair to assess Ashland on a system-wide basis.

Ashland further contends that its discharges, even when in excess of the IMA limits, likely were not the sole cause of any surcharge events in Framingham's system. (Ashland's Initial Brief, pp. 13-18). Again, Framingham fails to see the relevance of this argument. Ashland's flow into Framingham's system reduces the capacity available in Framingham's pipes for excess flow from any source, whether the excess flow comes from Framingham, from a backup in the MWRA's system, or from another MWRA member community. Thus, Ashland's normal flows increase the risk

to Framingham of a surcharge within its system. On those occasions when Ashland exceeds the IMA limits, the risk to Framingham of a surcharge is even greater. Because Framingham, not Ashland, shoulders all of this risk, it is appropriate to require that Ashland fairly compensate Framingham for proportionate flows it contributes to Framingham's system.

Ashland also contends that the Department should disregard Framingham's evidence as to the harmful effects on its system of sulfates and sulfides contained in Ashland's discharges, because Ashland has taken steps to reduce its future sulfate and sulfide emissions. (Ashland's Reply Brief, pp. 13-15).[7] Ashland does not dispute, however, that Nyacol, a company located in Ashland, was the primary, if not the only, reason for the MWRA's imposition on Framingham residents and businesses of strict sulfate and sulfide limits. (Framingham's Initial Brief, p. 19). Ashland also acknowledges that Framingham will have to devote significant resources to MWRA-mandated efforts to comply with these new limits. (Ashland's Reply Brief, pp. 13-15). Ashland should have to pay its fair share of these costs, which impact Framingham's entire system, not just the pipelines utilized by Ashland.

[7] Interestingly, Ashland does not provide any information as to current levels of sulfides and sulfates in its wastewater.

B. The Record Evidence Clearly Demonstrates That Ashland Obtains A Benefit From Its Use Of Framingham's System That Is of Far More Value Than Ashland's Proposed Annual Payment.

In its reply brief, Ashland disputes Framingham's contention that Ashland is receiving a benefit from its use of Framingham's system that is of far more value than the de minimis annual payment Ashland proposes to make. Ashland claims, without any citation to the record, that Ashland might be able to build its own connection to the FES for a sum much less than the $6,000,000 figure previously posited by Ashland's own consultant. (Ashland's Reply Brief, p. 16; Exh. FR-ASH-1-22). Ashland further claims, again without citation to the record, that it decided not to build its own connection to the FES for reasons unrelated to the current fee arrangement between the parties, which essentially permits Ashland to use Framingham's system free of charge. (Id.) Finally, Ashland takes the incredible position that the value of the benefit it receives from use of Framingham's system is "immaterial" to the Department's decision as to what constitutes a fair rate. (Id.)

None of these arguments is persuasive. The record evidence demonstrates that Ashland's proposed annual payment of $7,881 would not fairly compensate Framingham

for its annual cost of operating and maintaining the wastewater collection system utilized by Ashland, costs that have averaged around $2,000,000 per year during the past five years. (S. Geribo Direct Testimony, p. 19). The record evidence also demonstrates that Ashland receives a benefit from its use of Framingham's system that is far in excess of its proposed annual payment, as Ashland otherwise would have to expend more than $6,000,000 (including borrowing costs) to build its own pipeline(s) to the FES.[8] In light of this substantial benefit, Ashland's argument that Framingham's proposed methodology is "unfair" to Ashland rings hollow.

IV. RESPONSE TO ASHLAND'S PROPOSAL REGARDING INSTALLATION OF METERS AT DISCHARGE POINTS.

In its reply brief, Ashland acknowledges that it is obligated under the IMA to install a Parshall Flume at each discharge point into Framingham's system, but takes the untenable position that it is not required to install the equipment that will allow the Parshall Flume to measure flows. (Ashland's Reply Brief, pp. 24-25). This position clearly perverts the intent of this provision of the IMA, which was to require that Ashland bear the costs associated

[8] Of course, if Ashland were forced to construct its own pipelines to the FES, Ashland also would have to bear the annual costs of operating and maintaining those pipelines, costs that now are borne by Framingham.

with measuring and monitoring the amount of its flows into Framingham's system. (Exh. FR-14, ¶ 4; Exh. ASH-4 ("Vollmer Report"), p. 6). The Department should enforce the clear language of the IMA and order Ashland to install metering devices at the discharge points, as more accurate metering data will assist and enable the Department in making its determination as to a fair and appropriate rate.

V. RESPONSE TO ASHLAND'S CAPITAL COST ANALYSIS

It appears that Framingham and Ashland are in substantial agreement on the formula by which the cost of any future capital repairs or improvements to the pipelines utilized by Ashland should be allocated between the parties. Framingham disagrees, however, that Ashland should have veto power over any capital project Framingham wishes to undertake on its own wastewater collection system. (Ashland's Reply Brief, p. 27). If Ashland is not satisfied that a particular capital repair or replacement is warranted, Ashland can pursue any number of options, including cessation of use of Framingham's system. It would be totally unworkable to permit Ashland to have a say in Framingham's municipal affairs.

Framingham also disagrees with Ashland's contention that it should have no obligation to contribute if the capital repair or improvement is necessitated solely by a

need on Framingham's part for additional capacity. (Ashland's Initial Brief, p. 27). Even if Framingham were to improve or replace a pipe solely because it needed additional capacity, Ashland essentially would be getting the benefit of a brand new pipe. In this situation, Framingham proposes that the two towns share in the cost of the new pipe according to the capital formula set forth in Framingham's initial brief, with some provision for a "credit" to the town not needing additional capacity for the asset value lost by replacing a viable pipe with remaining useful life with a new pipe.

The following hypothetical example illustrates how this would work:

> One town requires more capacity than is available in the existing shared pipe, which is 25 years old, while the other town does not need more capacity. Because the 25-year-old pipe will be replaced with a new, larger pipe, the two towns should share in the cost of the new pipe, with a "credit" (based on the GASB 34 value) given to the town which does not need additional capacity for the asset value lost by virtue of replacing an existing pipe with remaining useful life with a new pipe.

Hypothetical Case:

Shared Pipe	A segment of pipe along the Farm Pond Interceptor
Problem	A segment of the pipe does not have adequate capacity to convey additional peak flow needed by Ashland, and a replacement pipe needs to be constructed. The existing peak flow from Framingham is determined to be 5,000 gpm based upon calculations of full flow capacity of shared pipe using Manning's formula. The requested peak flow from Ashland has increased from 1,740 gpm (2.5 mgd) to 2,780 gpm (4.0 mgd), based upon planning studies completed by Ashland. In this example, Framingham has no need for additional capacity.
Flow Ratio	In determining the proportionate share of cost for the new pipe, the peak flow from Ashland is 2,780 gpm and the peak flow from Framingham is 5,000 gpm. In determining the current value for the shared pipe (since it has remaining life), the existing peak flows are used as the basis for apportioning this asset value.
Cost	The total cost of this project is $4,000,000 for a new larger pipeline. The current value of the existing shared pipe segment is $1,000,000, based upon its remaining service life, as detailed in GASB 34.

The cost allocation for the project would be as follows:

Ashland’s share of project costs =

$$\left(\frac{2{,}780}{2{,}780+5{,}000} \times \$4{,}000{,}000\right) + \left(\frac{5{,}000}{5{,}000+1{,}740} \times \$1{,}000{,}000\right)$$

$$= \$2{,}171{,}145.68$$

Framingham’s share of project costs =

$$\left(\frac{5{,}000}{5{,}000+2{,}780} \times \$4{,}000{,}000\right) - \left(\frac{5{,}000}{5{,}060+1{,}740} \times \$1{,}000{,}000\right)$$

$$= \$1{,}828{,}854.32$$

VI. CONCLUSION

For the above-stated reasons, as well as those set forth in Framingham’s initial brief, Framingham respectfully submits that the Department should determine that SEA’s proposed methodology is the appropriate methodology to be applied in determining Ashland’s proportionate share of Framingham’s operations and maintenance costs.

Respectfully submitted,
THE TOWN OF FRAMINGHAM,
By its attorneys,

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